RECENT IMPORTANT DECISIONS.

ADMIRALTY—WHEN SHIP IS IN MARITIME SERVICE.—Defendant steamer anchored in front of plaintiff's docks and remained there for 37 days while waiting for its turn to discharge its cargo in an elevator located a short distance away. Plaintiff sued in a state court for damages under the WATERCRAFT ACT (§ 13625 HOWELL'S MICH. STAT. 1913). *Held,* that the vessel was, while awaiting her turn to unload, engaged in maritime service, that the admiralty courts of the United States had exclusive jurisdiction over an action to enforce a lien then arising against her, and that the action was properly dismissed by the state court; though that court would have had jurisdiction to enforce a lien against a vessel engaged in non-maritime service. *McMorran* v. *Steamer Millinokett,* (Mich. 1916) 156 N. W. —, 23 Det. Leg. News 111.

This decision re-affirms a proposition upon which doubt was thrown as a result of the conflicting opinions of majority and minority of the United States Supreme Court in the case of *The Robert W. Parsons,* 191 U. S. 17, and which was categorically denied by the writer of the note to *Ward* v. *Willson,* in 3 Mich. 1, on the supposed authority of certain decisions of the United States court. The proposition is that a state legislature is not restrained by the Federal Constitution from providing for the enforcement, by a proceeding in rem against the vessel itself in the state court, of a lien based on a non-maritime contract. Upon an examination of the decisions upon which the writer of the note in 3d of Michigan seems to rely for his conclusion, it is found that they merely hold that a proceeding in rem against the vessel in the state court is unauthorized for the enforcement of a lien based on a *maritime* contract, such a proceeding being considered to be peculiar to admiralty and not within the clause of the act of Congress saving to suitors their common law remedy on such contracts in the state courts. See *The Belfast,* 7 Wall. 624; *The Hine* v. *Trevor,* 4 Wall. 555, 571; *The Moses Taylor,* 4 Wall. 411, 427; *The Robert W. Parsons, supra.* In the dissenting opinion in the latter case, Justice BREWER'S extended argument to uphold the right of state courts to enforce non-maritime liens by a proceeding *in rem* analogous to that used in admiralty, if the legislature provided such a remedy, leaves the impression that the majority opinion denied the right. But the opinions do not conflict on this point. The only conflict between them is that one (per BROWN, J.), held the lien to be maritime while the other held it to be non-maritime. Under later authorities, there is clearly no warrant for saying that "state laws for the enforcement *in state courts* of maritime liens, and of *all liens in rem,* on boats and vessels, whatever their origin, are void." (See note in 3d Michigan, page 2.) See *Edwards* v. *Elliott,* 21 Wall. 532, 22 L. Ed. 487; *Knapp, Stout & Co.* v. *McCaffrey,* 177 U. S. 638, 44 L.Ed. 921; *The Winnebago,* 141 Fed. 945; s. c., 205 U. S. 354. In the case first cited, it was said: "In respect to such contracts (non-maritime), it was competent for the states to enact such laws as their legislatures might deem

just and expedient, and to provide for their enforcement *in rem.*" See also *Baizley* v. *The Odorilla,* 121 Pa. 231, 1 L. R. A. 505; *City of Erie* v. *Canfield,* 27 Mich. 479, and note; 15 COL. LAW REV. 343. "If the contract is not of a maritime nature, it is of no concern to the federal jurisdiction what remedies the State may provide, whether *in rem* or otherwise." Per SEVERENS, J., in *The Winnebago,* 141 Fed. 945.

BANKRUPTCY—INVOLUNTARY BANKRUPTCY AS ANTICIPATORY BREACH OF CONTRACT.—Claimant, a hotel company, granted baggage and livery privileges to the bankrupt for a term of five years in consideration of the bankrupt's agreement to pay $350.00 per month. The adjudication in involuntary bankruptcy occurred while the contract had more than four years to run, but the trustee did not elect to assume its performance. *Held,* the bankruptcy proceedings amount to an anticipatory breach of the contract, and the claim founded upon this breach is provable under § 63a (4) of the Bankruptcy Act. *Central Trust Co., Trustee,* v. *Chicago Auditorium Association,* 36 Sup. Ct. 412.

The courts seem to agree that bankruptcy is not an anticipatory breach of a covenant in a lease to pay rent. *Ex parte Houghton,* Fed. Cas. No. 6, 725; *In re May,* Fed. Cas. No. 9325; *Bailey* v. *Loeb,* Fed. Cas. No. 739; *In re Jefferson,* 93 Fed. 948; *Atkins* v. *Wilcox,* 105 Fed. 595; *In re Mahler,* 105 Fed. 428; *In re Arnstein,* 101 Fed. 706; *In re Hays, F. & W. Co.,* 117 Fed. 789; *In re Rubel,* 166 Fed. 131; *Bray* v. *Cobb,* 100 Fed. 270. (Reversed in *Cobb* v. *Overman,* 109 Fed. 65 on other grounds); *Watson* v. *Merrill,* 136 Fed. 359; *In re Hinckel Brewing Co.,* 123 Fed. 942; *In re Roth & Appel,* 181 Fed. 667; *In re Rennewell,* 119 Fed. 139; *Colman Co.* v. *Withoft,* 195 Fed. 250; *Cotting* v. *Hooper Lewis & Co.,* 220 Mass. 273. Some of these courts support the decisions upon the theory that the bankrupt lessee receives no discharge from paying future rents; while the others say that bankruptcy terminates the relation of landlord and tenant and destroys all future liability. *In re Inman & Co.,* 171 Fed. 185, in agreeing with this latter view considers that the relation of employer and employee is analogous to the relation of landlord and tenant and that involuntary bankruptcy therefore constitutes no breach of an executory contract to pay for personal services, since the contract has come to an end (at least when the bankrupt is a partnership and therefore dissolved by operation of law). The same court on the authority of this case and of *Malcolmson* v. *Wappo Mills, et al.,* 88 Fed. 680 and *People* v. *Globe Mutual Life Insurance Co.,* 91 N. Y. 174, held that involuntary bankruptcy constituted no breach of an executory contract to buy merchandise. *In re Inman & Co.,* 175 Fed. 312, *accord*: *In re Imperial Brewing Co.,* 143 Fed. 579. The latter court, however, was of the opinion that the contract continued in full force between the claimant and the bankrupt. The holding in the principal case is supported by the following: *Ex Parte Pollard,* Fed. Cas. No. 11, 252; *In re Pettingill & Co.,* 137 Fed. 143; *In re Stern,* 116 Fed. 604; *In re Neff,* 157 Fed. 57; *Pennsylvania Steel Co.* v. *New York City Ry. Co.,* 198 Fed. 721; *Board of Commerce of Ann Arbor, Mich.* v. *Security Trust Co.,* 225 Fed. 454. In the last-mentioned case, the contract was executory only on the part of the bankrupt. The holding in *In re Swift,*